the defendant in his letter of January 30, 1978 to sell the said land which was accepted by Tan. The evidence of what transpired before and after the letter of February 6, 1978 showed that the parties had agreed, amongst other things, on the price and had by March 13, 1978 made a contract set out in the agreement of sale sent by the plaintiffs' solicitors to the defendant's solicitors that day. Indeed, by that date all the material terms of the contract had been agreed upon and the case of *Clifton* v. *Palumbo*,[4] where even the price had not yet been determined by the parties, can on that ground alone be distinguished.

The facts of this case are therefore different from those in *Clifton* v. *Palumbo*[4] and are rather more similar to another recent U.K. Court of Appeal case of *Bigg & Anor.* v. *Boyd Gibbins Ltd.*[23] In that case the plaintiffs and defendants were negotiating for the sale of certain property belonging to the plaintiffs. The plaintiffs wrote to the defendants stating: 'As you are aware that I paid £25,000 for this property, your offer of £20,000 would appear to be at least a little optimistic. For a quick sale I would accept £26,000...'. In reply the defendants wrote: '... I accept your offer...' and asked the plaintiffs to contact the defendants' solicitors. In their final letter the plaintiffs said: 'I am putting the matter in the hands of my solicitors ... My wife and I are both pleased that you are purchasing the property.' The plaintiffs alleged that this exchange of letters constituted an agreement for the sale of the property and brought an action for specific performance. The U.K. Court of Appeal, distinguishing *Clifton* v. *Palumbo*[4] held in that case that although an agreement on price did not necessarily mean an agreement for sale and purchase, and the word 'offer' did not always mean offer in the sense of offer for actual sale but might be related to a particular term of the agreement whilst other negotiations in respect of the agreement continued, it was clear from the terms of the letters that the plaintiffs' first letter constituted an offer the acceptance of which by the defendants constituted a binding agreement; accordingly the plaintiffs in that case were entitled to specific performance. Similarly, in this case, I found on the evidence, both oral and documentary, that there was an offer by the defendant and a definite acceptance by the plaintiffs constituting a binding agreement. Therefore, also bearing in mind the warnings of Lord Greene M.R. in *Clifton* v. *Palumbo*,[4] and having read all the letters between the parties and their solicitors I too, like Russell L.J. in *Bigg & Anor.* v. *Boyd Gibbons Ltd.*[23] could not "escape the view that the parties would regard themselves ... as having struck a bargain for the sale and purchase of the property". The facts of this case also did not support any inference that the parties intended to be bound only when a formal agreement had been executed, and the use of the words "the technical details I leave to my lawyers" were in my judgment and I so found, to use the oft-quoted words of Parker J. in *Von Hatzfeldt-Wildenburg* v. *Alexander*,[8] "a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through". In all the circumstances of this case, I therefore made a further order in favour of the first plaintiff for specific performance of the agreement as set out in the draft sent by the plaintiffs' solicitors to the defendant's solicitors on March 13, 1978. Costs were also ordered by me in favour of both plaintiffs.

Claim allowed.

Solicitors: *Lim Kean Chye & Co.; Lewis & Co.*

ONG GUAN TECK & ORS. v. HIJJAS

[O.C.J. (Hashim Yeop A. Sani J.) October 5, 1981]
[Kuala Lumpur — Originating Motion A 31 of 1981]

Practice and Procedure — Limitation — When Court will extend period — Scope of Rules of High Court 1980, O. 69(4)(1).

Arbitration — Award — Circumstances in which Court will interfere — Arbitration Act, 1952, ss. 23 & 24.

The applicants sought to have the period of six weeks limited by O. 69(4)(1) of the Rules of the High Court 1980 for an application to remit an award under section 23 of the Arbitration Act, 1952 extended on the following grounds:— that there was a divergence of opinion on the interpretation of the award between the parties and that the applicants only realised this on June 23, 1981. Only after this realization did the applicants feel that there was "genuine doubt" in their minds whether the various amounts paid by them had been taken into account by the arbitrator in his award.

The award was made and published on April 2, 1981. The applicants filed the Notice of Originating Motion for extension of time on September 16, 1981.

Held, dismissing the application: (1) the court has an unfettered discretion to grant or refuse an extension of time;

(2) the rules of court must *prima facie* be obeyed and in order to justify an extension of time, there must be some material on which the court can exercise its discretion in favour of the applicant. For otherwise the party in breach of the rules would have an unfettered right to extension of time which would defeat the very purpose and object of the rules of limitation of period;

(3) in considering whether to grant or refuse extension of time the length of time that has lapsed is always a material factor to be considered by the court exercising the discretion; On the facts of the present case there was not any valid ground for the delay and therefore application for extension of time must be refused;

(4) the court may set aside an award if the award is bad on the face of it; that there has been misconduct on the part of the arbitrator; if there has been an admitted mistake and the arbitrator asks that the matter be remitted; where additional evidence has been discovered after the making of the award; or where the award is ambiguous, confusing and unclear. In the present case there was nothing ambiguous or confusing or uncertain in the language of the arbitrator.

Cases referred to:-

(1) *Hodgkinson* v. *Fernie & Anor.* 140 E.R. 712.

(2) *Montgomery Jones Co.* v. *Liebenthal & Co.* (1898) 78 L.T. 406; Digest 456, 1036.

(3) *Margulies Brothers Ltd.* v. *Dafnis Thomaides & Co. Ltd.* [1958] 1 W.L.R. 398; [1958] 1 All E.R. 777.

ORIGINATING MOTION.

I. de Silva for the applicants.

K. Thayalan for the respondents.

Hashim Yeop A. Sani J.: The amended Notice of Originating Motion sought to have the period of 6 weeks limited by Order 69(4)(1) of the Rules of the High Court 1980 for an application to remit an award under section 23 of the Arbitration Court, 1952 ex-

tended on the grounds given in the affidavit of the 1st and 4th applicants. The applicants also sought to remit matters relating to certain payments made and whether the payments were accounted for by the arbitrator.

To get our perspective right let us first examine the relevant provisions of the Arbitration Act, 1952. Section 23 of the Act provides that the High Court may from time to time remit an award for the reconsideration of the arbitrator. Section 24 of the Act *inter alia* provides that the High Court may set aside an award where it is satisfied that an arbitrator has misconducted himself or that the award has been improperly procured. Order 69 rule 4(1) of the Rules of the High Court, 1980 provides that an application to remit an award under section 23 of the Arbitration Act may be made within 6 weeks after the award has been made and published.

The award concerned was made on April 2, 1981 — Exhibit P10 attached to the affidavit of the applicants. The originating motion was first taken out on September 16, 1981 and subsequently amended on October 12, 1981. In other words, the application for extension of time in this case was made $5\frac{1}{2}$ months after the award was made and 4 months after expiry of the period required by Order 69 rule 4 of the Rules of the High Court, 1980.

In the present application the applicants would have to satisfy the court firstly that there were good grounds for the delay in making the application and secondly, there was sufficient merit for the award to be remitted to the arbitrator.

The reasons given in the affidavit of the applicants were that there was a divergence of opinion on, or interpretation of the award between the parties and this divergence or difference was according to the applicants first realised only on June 23, 1981 — see paragraph 27 of the affidavit dated September 16, 1981. Only after this realisation did the applicants feel that there was "genuine doubt" in their minds whether the various amounts paid by them as described in paragraph 15 of the affidavit had been taken into account by the arbitrator in his award. In my opinion it is in paragraphs 27 and 29 of the affidavit of the applicants that the real crux of the question in this case lies. For it is in these two paragraphs that the following propositions were crystallised: —

"(i) That the applicants realised for the first time on June 23, 1981 that their interpretation of the award was different from that of the respondent; and

(ii) The real ground behind their application for remitting the award was that they felt there was genuine doubt in their minds whether the various amounts referred to by them in paragraph 15 of the affidavit had been taken into account by the arbitrator."

It is to be noted, however, that the applicants had in another proceeding in O.M. A35 of 1981 in their affidavit in reply to the application of the respondent for leave to enforce the same award raised (in paragraph 5 of their affidavit dated July 2, 1981) the same point about certain payments probably not accounted for by the arbitrator. It may be pointed out that in the same affidavit in O.M. A35 of 1981 the applicants did not, however, ask that the award be remitted but merely requested clarification from the arbitrator before the award could be enforced.

It is also to be noted that in the affidavit of the applicants in O.M. A31 of 1981 and their affidavit in O.M. A35 of 1981 all the payments referred to were made on various dates in 1979 and 1980. In other words, these payments were all made before the date of the award i.e. April 2, 1981 although some payments were made after the statement of claim was filed. It is not disputed that the award itself was made and published on April 2, 1981. It is also admitted by the applicants in their affidavit that they knew of "the different interpretation" on June 23, 1981. In another affidavit sworn on July 2, 1981 they also referred to those payments which they thought probably not accounted for by the arbitrator. The applicants filed the Notice of Originating Motion for extension of time on September 16, 1981.

It is trite law that the court has an unfettered discretion to grant or refuse an extension of time. The first principle is that the rules of court must *prima facie* be obeyed and in order to justify an extension of time, there must be some material on which the court can exercise its discretion in favour of the applicant. For otherwise the party in breach of the rules would have an unfettered right to extension of time which would defeat the very purpose and object of the rules on limitation of period.

In considering whether to grant or refuse extension of time the length of time that has lapsed is always a material factor to be considered by the court exercising the discretion. On the facts of this case I was not able to honestly say that there was any valid ground for the delay and therefore refused the application for extension of time.

The next question was whether there was merit in the application to remit the award. In their affidavit the applicants stated that there was genuine doubt whether those payments referred to were accounted for by the arbitrator in coming to the figure referred to in paragraph 1(ii) of the award. During submission counsel for the applicants described the award as "ambiguous or confusing". For convenience, paragraph 1(ii) of the award is reproduced below: —

"(ii) $697,146 (ringgit six hundred and ninety-seven thousand one hundred and forty-six only) being the full and final settlement of all other claims (and counter-claims) herein."

As referred to earlier in the judgment section 23 of the Arbitration Act, 1952 seems to confer a wide discretion for the court to remit an award. However, the power of the court to set aside an award is not unlimited and section 24(2) of the Act provides that the High Court may set aside an award only where an arbitrator or umpire has misconducted himself or the proceedings or the award had been improperly procured. The language of section 24(2) would seem to be rather narrow and limited. In other words, the power of the High Court to set aside an award is restricted to cases where some form of dishonesty or bias is shown.

It has long been accepted that the decision of an arbitrator, whether a lawyer or a layman, is binding

on the parties both in matters of law and in matters of fact unless it is proved there has been fraud or corruption on his part or there be some mistake of law apparent on the face of the award. — See *Hodgkinson* v. *Fernie & Anor.*[1] It has also been held as settled law as early as 1898 in *Montgomery Jones & Co.* v. *Liebenthal & Co.*[2] that the following grounds would constitute good grounds for the court to remit an award, namely: —

(1) that the award is bad on the face of it;

(2) that there has been misconduct on the part of the arbitrator;

(3) that there has been an admitted mistake and the arbitrator asks that the matter be remitted; and

(4) where additional evidence has been discovered after the making of the award.

However, as Diplock said in *Marqulies Brothers Ltd.* v. *Dafnis Thomaides & Co. Ltd.*[3] the court is by no means limited to the 4 grounds referred to although "I should naturally hesitate before exercising my discretion to remit a case which does not come within any one of the four categories there approved."

The award may properly be remitted if, for example, it is genuinely ambiguous or confusing or otherwise unclear as in *Marqulies Brothers Ltd.* v. *Dafnis Thomaides & Co. Ltd.* case. In that case the award did not specify the sum to be paid although the method of calculating it was indicated and not in dispute. The applicants applied for the award to be remitted to the arbitrator, so that the amount to be paid to them could be computed and the award amended so as to become enforceable. It was held that on those facts it was clear that on the face of the award it was uncertain and therefore bad and a proper case for remission. I was, however, unable to come to the same conclusion on the facts of this case. There is nothing ambiguous, confusing or uncertain in the language of the arbitrator in paragraph 1(ii) of the award.

There is nothing to show that the award or any part of it, contains any error on the face of it. The applicants having "doubts", however genuine, could not constitute sufficient ground to remit the award. In my opinion therefore there was no merit in the application for remission.

Accordingly the application was dismissed with costs.

Application dismissed.

Solicitors: *Chooi & Co.; Skrine & Co.*

VERAMA v. AMARUGAM & ANOR.

[O.C.J. (Arulanandom J.) April 12, July 18, September 26 & November 7, 1977; January 9 & 30, 1978; May 28, 1979; January 26, March 23, April 27, June 8, July 13 & August 5, 1981 & September 2, 1981]

[Penang — Civil Suit No. 153 of 1977]

Land Law — Premises as part of land — Claim by registered proprietor — Laws under National Land Code not to be tempered by Equity.

The plaintiff claimed against the defendants as administrators of the estate of one Gopal and in their respective personal capacities for premises Nos. 3141, 3142 and 1600 erected on the plaintiff's land. The plaintiff was the registered proprietor of the said land.

The defendants relied on the doctrine of equitable estoppel. They submitted that the plaintiff had permitted the said houses to be built and that the plaintiff had agreed that:— (1) Gopal (deceased) and his heirs and beneficiaries would be able to occupy and live in the said premises No. 1600 as long as they wished and (2) that Lingam s/o Gopal would be able to live and rent out buildings Nos. 3141 and 3142 as long as he wished.

Held, allowing the plaintiff's claim: (1) the land laws are governed by the National Land Code which does not allow the law to be tempered by equity;

(2) the defendants were at the most gratuitous licensees and in the case of the first defendant the licence granted to her household died with her husband. House No. 1600 did not form part of the estate of Gopal for being an immovable it was part of the plaintiff's land. To hold otherwise would be in direct conflict with the principles of registered proprietorship of land under the National Land Code;

(3) the defendants as administrator of the estate of Gopal had no interest whatsoever in houses Nos. 3141 and 3142 which, as claimed by the defendants themselves, were built by one Lingam;

(4) under the provisions of the National Land Code, the title of the registered proprietor is indefeasible unless it is obtained by fraud, mistake, undue influence etc. In this case there is no such allegation; the defendants could not resist the declaration prayed for.

Cases referred to:-

(1) *Inwards & Ors.* v. *Baker* [1965] 1 All E.R. 446.

(2) *Ooi Ai Seng* v. *Chan Lin Lam* [1973] 2 M.L.J. 20 & 21.

CIVIL SUIT.

R. Rajasingam for the plaintiff.

Sam Mathuram for the defendants.

Cur. Adv. Vult.

Arulanandom J.: This is an application by notice of motion for summary judgment by the plaintiff in the above Civil Suit commenced by writ of summons against the defendants for the following reliefs: —

"INDORSEMENT OF CLAIM

The plaintiff claims against the defendants who are sued both as the Administrators of the Estate of Gopal son of Muthu Cavunder alias M. Gopal son of Muthu deceased and in their respective personal capacities —

(1) A Declaration that premises Nos: 3141 and 3142 and premises No: 1600 Sungei Myor Road, Butterworth, Province Wellesley, erected on land known as Holding No. 291, Bandar Butterworth section 3, State of Penang form part of the said land, being attached to the earth surface of the said land, and as such is the property of the plaintiff;

(2) An Order that the defendants or any of them or any person or persons claiming through or under them or any of them do deliver possession of the said premises to the plaintiff;